

S.B. Civil Writ Petition No.4672/02

07.02.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri G.P. Kaushik, Advocate for
petitioner.

Shri Mahendra Goyal, Advocate for
respondent.

Shri B.S. Chhaba, Dy. GA for State.

Heard learned counsel for the
parties.

This writ petition has been filed
with the prayer that by issue of mandamus
FIR No.97/02 registered with Police
Station Sangner Sadar for offences under
Section 420, 467, 468, 471 and 120 B IPC
be quashed.

I have heard Shri G.P. Kaushik,
learned counsel for the petitioner, Shri
B.S. Chhaba, learned Dy. Government
Advocate and Shri Mahendra Goyal for the
respondent JDA.

Shri G.P. Kaushik, learned counsel for the petitioner has argued that the petitioner is being falsely implicated in the present case, because the allegations pertained to the period 1981 to 1984 when one Naval Kishore Pareek was President and Shri Bhawani Sahai Purohit was the Secretary. Even for the subsequent period from 1984 to 1989 also, Shri Ram Niwas Tyagi was the President and Shri Hanuman Sahai Tambi was the Secretary of the Committee. The petitioner became President of the Samiti in the year 1999. The purchase of the lands and their allotments in favour of the members of the society were made under the signatures of the aforesaid office bearers and they allotted the plots in the scheme of Avadh Vihar Colony

in Khasra no.178/02 and Khasra no. 181 after it was recorded in the khatedari of the original owner Shri Durga Singh. In so far as the agreement to sale dated 7.7.1981 pertaining to khasra no.178/02 admeasuring 3 bighas and 2 biswas is concerned, he submits that finally the revenue suit with regard to this land was decided in favour of Durga Singh and however he took possession of the land after the judgment in such revenue suit was delivered by Assistant Collector, Jaipur on 8.3.1984. He, therefore submits that no case of alleged offences is made out against the petitioner and the FIR should be quashed.

On the other hand, Shri B.S. Chhaba, learned Dy. Government Advocate and Shri Mahendra Goyal, learned counsel

for the respondent-JDA opposed the writ petition and argued that the FIR can be quashed by this Court in exercise of its extraordinary jurisdiction only if the contents thereof, even if accepted in entirety do not make out any offence. Not only from the perusal of the contents of the FIR but also from the tenor of the petition it becomes prima facie clear that the offence has indeed taken place. According to the respondents, office bearers of the said Samiti including the petitioner were privy to the conspiracy of selling government land to various members of the society by fabricating documents. It has been argued that in view of law laid down by Hon'ble Supreme Court in State of Haryana & Ors. Vs. Bhajan Lal & Ors., 1992 Supp (1) Supreme

Court Cases 335, the writ petition filed by the petitioner is liable to be dismissed.

I have given my thoughtful consideration to the arguments advanced by the learned counsel for the parties and perused the material on record. On perusal of the FIR, I am not persuaded to take the view that even if what is contended therein is accepted in entirety, no case worth investigation is made out. Even the argument of learned counsel for the petitioner is that it was not the petitioner but other office bearers of the society who may be responsible for the offence alleged in the FIR and that the petitioner became President of the Samiti in the year 1999 and therefore he cannot be held liable

for what had happened before his taking over as President of the Samiti. Whether or not any offence is made out and further who may be responsible for such offence are all matters of investigation. This would be neither justified nor appropriate for this Court to evaluate evidence at this stage and come to definite conclusion, one or the other way, to find out as to who may be guilty. In view of the seven golden principles laid down by the Hon'ble Supreme Court in celebrated case of Bhajan Lal (supra), no interference is called for. The case of the petitioner does not fall in any of the said seven principles.

In the result, the writ petition is dismissed with no order as to costs.

Rs/-

(Mohammad Rafiq), J.